

ST 96-15
Tax Type: SALES TAX
Issue: Sales To Exempt Organizations

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket #
v.)	IBT #
)	NTL #s
TAXPAYER A d/b/a)	
TAXPAYER B)	
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

SYNOPSIS:

THE ILLINOIS DEPARTMENT OF REVENUE (THE "DEPARTMENT") ISSUED TWO NOTICES OF TAX LIABILITY TO TAXPAYER A, DOING BUSINESS AS TAXPAYER B (THE "TAXPAYER") IN THE AGGREGATE AMOUNT OF \$33,781.00. THE TAXPAYER PROTESTED THE NOTICES OF TAX LIABILITY BASED UPON THE FACT THAT THE SALES WERE FOR RESALE OR TO TAX EXEMPT ENTITIES. THE HEARING WAS HELD PURSUANT TO THE PROTEST. AT THE HEARING, THE TAXPAYER FAILED TO REBUT THE DEPARTMENT'S PRIMA FACIE CASE. IT IS RECOMMENDED THAT THE DECISION OF THE DIRECTOR OF THE DEPARTMENT BE THAT THE TAXPAYER WAS LIABLE FOR THE TAXES IMPOSED ON THE NOTICES OF TAX LIABILITY.

FINDINGS OF FACT:

1. THE DEPARTMENT'S PRIMA FACIE CASE WAS ESTABLISHED BY ADMISSION INTO EVIDENCE OF DEPT. EX. NOS. 1 - 5.

2. TAXPAYER A OWN AND OPERATE TAXPAYER B WHICH DOES BUSINESS AS A SELLER OF USED CONSTRUCTION EQUIPMENT. DEPT. EX. NO. 1

3. THE DEPARTMENT CONDUCTED A FIELD AUDIT OF THE TAXPAYER AND FOUND THAT THE TAXPAYER OWED TAXES, PENALTY AND INTEREST IN THE AMOUNT OF \$33,781.00. DEPT. EX. NOS. 1 AND 2

4. THE TAXPAYER PROTESTED THE ASSESSMENT AND ASSERTED THAT THE COMPANIES THAT HE HAD THE TRANSACTIONS WITH IN 1991 AND 1992, XXXXX WERE EITHER DONE WITH THE TAXPAYER ACTING AS A WHOLESALER OR WERE SALES TO TAX EXEMPT COMPANIES. THE TAXPAYER ASSERTED THAT THE ONLY TAX DUE DURING THAT PERIOD WAS FOR 98 HATS THAT HE HAD PURCHASED FROM COMPANY. DEPT. EX. NO. 3; TR. PP. 20-27

5. IN CORRESPONDENCE WITH THE DEPARTMENT, THE TAXPAYER ASSERTED THAT TAXPAYER C HAD ID #XXXXXX, TAXPAYER D HAD EXEMPTION #XXXXXX AND TAXPAYER E HAD ID #XXXXXX. DEPT. EX. NO. 3

6. THE DEPARTMENT VERIFIED THAT THE ID NUMBERS FOR TAXPAYER C AND TAXPAYER E SERVICE WERE CORRECT, HOWEVER EXEMPTION NUMBER XXXXX WAS GRANTED BY THE DEPARTMENT TO TAXPAYER F BETWEEN 1985 AND 1990. TAXPAYER'S POST-HEARING EX. NO. 1

7. THE TAXPAYER ASSERTED AT THE HEARING THAT HE HAD A TAX NUMBER WHICH WAS IN USE AT ALL TIMES. TR. PP. 11 - 17, 38

8. PURSUANT TO FURTHER CORRESPONDENCE WITH THE DEPARTMENT, THE TAXPAYER REALIZED THAT HE DID NOT HAVE A REGISTRATION NUMBER UNTIL THE AUDIT BEGAN. TAXPAYER POST-HEARING EX. NO. 1

9. THE AUDIT PERIOD IS JANUARY 1, 1986 THROUGH DECEMBER 31, 1993. THE BASIS OF THE AUDIT WAS A PROJECTION FROM THE TAXPAYERS RECORDS OF 1991 AND 1992. DEPT. EX. NO. 5

CONCLUSIONS OF LAW:

THE RETAILERS OCCUPATION TAX ACT IMPOSES A TAX ON RETAILERS IN THE STATE OF ILLINOIS PURSUANT TO 35 ILCS 120/2. IT STATES:

§ 2. TAX IMPOSED. A TAX IS IMPOSED UPON PERSONS ENGAGED IN THE BUSINESS OF SELLING AT RETAIL TANGIBLE PERSONAL PROPERTY, INCLUDING COMPUTER SOFTWARE, AND INCLUDING PHOTOGRAPHS, NEGATIVES, AND POSITIVES THAT ARE THE PRODUCT OF PHOTOPROCESSING, BUT NOT INCLUDING PRODUCTS OF PHOTOPROCESSING PRODUCED FOR USE IN MOTION PICTURES FOR PUBLIC COMMERCIAL EXHIBITION.

THE ILLINOIS COMPILED STATUTES PROVIDE FOR SALES FOR RESALE AT 35 ILCS 120/2. THE STATUTORY LANGUAGE IS AS FOLLOWS:

§ 2C. IF THE PURCHASER IS NOT REGISTERED WITH THE DEPARTMENT AS A TAXPAYER, BUT CLAIMS TO BE A RESELLER OF THE TANGIBLE PERSONAL PROPERTY IN SUCH A WAY THAT SUCH REALES ARE NOT TAXABLE UNDER THIS ACT OR UNDER SOME OTHER TAX LAW WHICH THE DEPARTMENT MAY ADMINISTER, SUCH PURCHASER (EXCEPT IN THE CASE OF AN OUT-OF-STATE PURCHASER WHO WILL ALWAYS RESELL AND DELIVER THE PROPERTY TO HIS CUSTOMERS OUTSIDE ILLINOIS) SHALL APPLY TO THE DEPARTMENT FOR A RESALE NUMBER. SUCH APPLICANT SHALL STATE FACTS WHICH WILL SHOW THE DEPARTMENT WHY SUCH APPLICANT IS NOT LIABLE FOR TAX UNDER THIS ACT OR UNDER SOME OTHER TAX LAW WHICH THE DEPARTMENT MAY ADMINISTER ON ANY OF HIS REALES AND SHALL FURNISH SUCH ADDITIONAL INFORMATION AS THE DEPARTMENT MAY REASONABLY REQUIRE.

UPON APPROVAL OF THE APPLICATION, THE DEPARTMENT SHALL ASSIGN A RESALE NUMBER TO THE APPLICANT AND SHALL CERTIFY SUCH NUMBER TO HIM. THE DEPARTMENT MAY CANCEL ANY SUCH NUMBER WHICH IS OBTAINED THROUGH MISREPRESENTATION, OR WHICH IS USED TO MAKE A PURCHASE TAX-FREE WHEN THE PURCHASE IN FACT IS NOT A PURCHASE FOR RESALE, OR WHICH NO LONGER APPLIES BECAUSE OF THE PURCHASER'S HAVING DISCONTINUED THE MAKING OF TAX EXEMPT REALES OF THE PROPERTY.

THE DEPARTMENT MAY RESTRICT THE USE OF THE NUMBER TO ONE YEAR AT A TIME OR TO SOME OTHER DEFINITE PERIOD IF THE DEPARTMENT FINDS IT IMPRACTICABLE OR OTHERWISE INADVISABLE TO ISSUE SUCH NUMBERS FOR INDEFINITE PERIODS.

EXCEPT AS PROVIDED HEREINABOVE IN THIS SECTION, A SALE SHALL BE MADE TAX-FREE ON THE GROUND OF BEING A SALE FOR RESALE IF THE PURCHASER HAS AN ACTIVE REGISTRATION NUMBER OR RESALE NUMBER FROM THE DEPARTMENT AND FURNISHES THAT NUMBER TO THE SELLER IN CONNECTION WITH CERTIFYING TO THE SELLER THAT ANY SALE TO SUCH PURCHASER IS NONTAXABLE BECAUSE OF BEING A SALE FOR RESALE.

FAILURE TO PRESENT AN ACTIVE REGISTRATION NUMBER OR RESALE NUMBER AND CERTIFICATION TO THE SELLER THAT A SALE IS FOR RESALE CREATES A PRESUMPTION THAT A SALE IS NOT FOR RESALE. THIS PRESUMPTION MAY BE REBUTTED BY OTHER EVIDENCE THAT ALL OF THE SELLER'S SALES ARE SALES FOR RESALE, OR THAT A PARTICULAR SALE IS A SALE FOR RESALE.

PURSUANT TO THE AUTHORITY GRANTED BY THE LEGISLATURE, THE DEPARTMENT HAS PROMULGATED STANDARDS TO SUBSTANTIATE WHAT IS NECESSARY TO VERIFY A SALE FOR RESALE. THE RULE IS FOUND AT 86 ADMIN. CODE CH. 1, SEC. 130.1405. IT STATES:

- A) EXCEPT IN THE CASE OF SALES TO TOTALLY EXEMPT PURCHASERS, WHEN SALES FOR RESALE ARE MADE, SELLERS SHOULD, FOR THEIR PROTECTION, TAKE A CERTIFICATE OF RESALE FROM THE PURCHASER. MERE STATEMENTS BY SELLERS THAT PROPERTY WAS SOLD FOR RESALE WILL NOT BE ACCEPTED BY THE DEPARTMENT WITHOUT CORROBORATIVE EVIDENCE. CERTIFICATES OF RESALE MAY BE MADE PART OF PURCHASE ORDERS SIGNED BY THE PURCHASER.
- B) A CERTIFICATE OF RESALE IS A STATEMENT SIGNED BY THE PURCHASER THAT THE PROPERTY PURCHASED BY HIM IS PURCHASED FOR PURPOSES OF RESALE. PROVIDED THAT THIS STATEMENT IS CORRECT, THE DEPARTMENT WILL ACCEPT CERTIFICATES OF RESALE AS PRIMA FACIE PROOF THAT SALES COVERED THEREBY WERE MADE FOR RESALE. IN ADDITION TO THE STATEMENT, A CERTIFICATE OF RESALE MUST CONTAIN:
 - 1) THE SELLER'S NAME AND ADDRESS;
 - 2) THE PURCHASER'S NAME AND ADDRESS;
 - 3) A DESCRIPTION OF THE ITEMS BEING PURCHASED FOR RESALE
 - 4) PURCHASER'S SIGNATURE AND DATE OF SIGNING;
 - 5) REGISTRATION NUMBER, RESALE NUMBER, OR CERTIFICATION OF RESALE TO OUT-OF-STATE PURCHASER

A) PURCHASER'S REGISTRATION NUMBER WITH THE ILLINOIS DEPARTMENT OF REVENUE; OR

B) PURCHASERS RESALE NUMBER ISSUED BY THE DEPARTMENT OF REVENUE, OR

C) A STATEMENT THAT THE PURCHASER IS AN OUT-OF-STATE PURCHASER WHO WILL SELL ONLY TO PURCHASERS LOCATED OUTSIDE THE STATE OF ILLINOIS.

C) IF ALL OF A PURCHASER'S PURCHASES ARE FOR RESALE, A PURCHASER MAY PROVIDE A BLANKET CERTIFICATE OF RESALE TO A SELLER.

1) WHILE THERE IS NO STATUTORY REQUIREMENT THAT BLANKET CERTIFICATES OF RESALE BE RENEWED AT CERTAIN INTERVALS, BLANKET CERTIFICATES SHOULD BE UPDATED PERIODICALLY, AND NO LESS FREQUENTLY THAN EVERY THREE YEARS.

2) IF A PURCHASER KNOWS THAT A CERTAIN PERCENTAGE OF ALL PURCHASES FROM A GIVEN SELLER WILL BE MADE FOR PURPOSES OF RESALE, HE MAY ACCEPT A BLANKET CERTIFICATE OF RESALE STATING THAT A DESIGNATED PERCENTAGE OF THE SALES MADE BY SUCH SELLER TO SUCH PURCHASER WILL BE MADE FOR PURPOSES OF RESALE.

D) FAILURE TO PRESENT AN ACTIVE REGISTRATION NUMBER OR RESALE NUMBER AND A CERTIFICATION TO THE SELLER THAT A SALE IS FOR RESALE CREATES A PRESUMPTION THAT A SALE IS NOT FOR RESALE. THIS PRESUMPTION MAY BE REBUTTED BY OTHER EVIDENCE THAT ALL OF THE SELLER'S SALES ARE SALES

FOR RESALE, OR THAT A PARTICULAR SALE IS A SALE FOR
RESALE.

NOTICES OF TAX LIABILITY ARE PRESUMED TO BE CORRECT AND THE BURDEN
OF PROOF IS UPON THE TAXPAYER TO SHOW THAT THE NOTICES ARE ERRONEOUS.
MASINI V. DEPARTMENT OF REVENUE, 60 ILL.APP.3D 11 (1978) CITING ANDERSON V.
DEPARTMENT OF FINANCE, 370 ILL. 225 (1938)

AS A GENERAL MATTER, AND LEAVING ASIDE CASUAL INDIVIDUAL SALES, ALL
SALES OF TANGIBLE PERSONAL PROPERTY ARE TAXABLE UNLESS TAXPAYER
PRODUCES EVIDENCE IDENTIFIED WITH ITS BOOKS AND RECORDS TO ESTABLISH ITS
CLAIM OF NONLIABILITY. MEL-PARK DRUGS, INC. V. DEPARTMENT OF REVENUE, 218
ILL.APP.3D 203 (1ST DIST. 1991)

THE RETAILERS OCCUPATION TAX ACT, WHICH IMPOSES A TAX ON PERSONS
ENGAGED IN BUSINESS OF SELLING TANGIBLE PERSONAL PROPERTY AT RETAIL, DID
NOT APPLY TO WHOLESALER WHICH MADE NO SALES AT RETAIL, BUT MADE ALL
SALES TO RETAIL GROCERY STORES FOR PURPOSES OF RESALE EVEN THOUGH THE
WHOLESALER DID NOT DOCUMENT THE RESALE CHARACTER OF ITS INDIVIDUAL SALES,
I.E., DID NOT OBTAIN THE PURCHASER'S REGISTRATION NUMBER, HIS RESALE NUMBER,
OR A "CERTIFICATE OF RESALE"; IT IS NOT THE SALE OF PROPERTY BUT THE BUSINESS
OF SELLING IT FOR USE OR CONSUMPTION WHICH IS THE SUBJECT OF THE TAX.
DEARBORN WHOLESALE GROCERS, INC. V. WHITLER, 82 ILL.2D 471 (1980) IN
DEARBORN, THE QUESTION OF WHETHER THE SALES WERE SALES FOR RESALE WAS
NOT BEFORE THE COURT AND IN FACT, THE UNCHALLENGED EVIDENCE WAS THAT ALL
OF DEARBORN'S SALES WERE FOR RESALE. THEREFORE DEARBORN CAN BE
DISTINGUISHED FROM THIS CASE BECAUSE THE QUESTION OF WHETHER THE SALES AT
ISSUE WERE IN FACT, SALES FOR RESALE, IS BEFORE THIS COURT.

THE ILLINOIS COURT OF APPEALS IN ELKAY MANUFACTURING CO. V. SWEET,
202 ILL. APP.3D 466 (1990) AT 475 HAS DISTINGUISHED DEARBORN BY STATING:

WITHOUT ANY EVIDENCE TO THE CONTRARY, IT CAN ONLY BE
CONCLUDED THAT PLAINTIFF HELD ITSELF OUT TO ITS RETAIL
CUSTOMERS AS A RETAILER BY SELLING ITS PRODUCTS ON A REGULAR
RETAIL BASIS. THUS, EVEN ASSUMING ARGUENDO THAT THE
REASONING IN DEARBORN ETC. [CITATION OMITTED] WOULD EXTEND TO
THE SITUATION AT HAND, PLAINTIFF HAS NOT DEMONSTRATED THAT IT
WAS NOT ENGAGED IN THE BUSINESS OF RETAIL SELLING.

THE APPELLATE COURT OF ILLINOIS IN SOHO CLUB, INC. V. DEPARTMENT OF
REVENUE, 269 ILL.APP.3D 220 (1995) AT 230 ADDRESSED THE PLAINTIFF'S BURDEN
ONCE THE DEPARTMENT HAS ESTABLISHED THE PRIMA FACIE CASE. THE COURT SAID:

IN PEDIGO V. DEPARTMENT OF REVENUE, (1982), 105 ILL. APP.
3D 759, 765, 434 N.E.2D 860, THE COURT HELD THAT ONCE SOME
EVIDENCE HAS BEEN INTRODUCED BY DEFENDANT WHICH ESTABLISHED
THAT PLAINTIFF MAKES RETAIL SALES IN GENERAL, THE BURDEN OF
PRODUCTION SHIFTS TO PLAINTIFF, WHO THEN HAS THE BURDEN OF
OVERCOMING DEFENDANT'S PRIMA FACIE CASE WITH EVIDENCE
INDICATING THAT THE ALLEGED RETAIL SALES WERE, IN FACT, FOR
RESALE, OR WERE FOR SOME OTHER REASON NONTAXABLE
TRANSACTIONS OR WHICH SHOWS THAT NO RETAIL SALES WERE MADE
AND THAT, IN FACT, NO RETAIL BUSINESS EXISTS. IN ELKAY
MANUFACTURING CO. V. SWEET (1990), 202 ILL. APP. 3D 466, 474-75,
559 N.E.2D 1058, THIS COURT HELD THAT DEFENDANT'S PRODUCTION OF
PLAINTIFF'S CORRECTED RETAILER'S OCCUPATION TAX RETURNS WAS
SUFFICIENT TO ESTABLISH A PRIMA FACIE CASE THAT PLAINTIFF WAS

ENGAGED IN A RETAIL OCCUPATION AND THUS SUBJECT TO THE ROT ACT.

THE ILLINOIS STATUTES IMPOSE A REQUIREMENT UPON PERSONS ENGAGED IN THE BUSINESS OF SELLING TO KEEP ADEQUATE BOOKS AND RECORDS, ACCORDING TO 35 ILCS 120/7, WHICH STATES AS FOLLOWS:

§ 7. EVERY PERSON ENGAGED IN THE BUSINESS OF SELLING TANGIBLE PERSONAL PROPERTY AT RETAIL IN THIS STATE SHALL KEEP RECORDS AND BOOKS OF ALL SALES OF TANGIBLE PERSONAL PROPERTY, TOGETHER WITH INVOICES, BILLS OF LADING, SALES RECORDS, COPIES OF BILLS OF SALE, INVENTORIES PREPARED AS OF DECEMBER 31 OF EACH YEAR OR OTHERWISE ANNUALLY AS HAS BEEN THE CUSTOM IN THE SPECIFIC TRADE AND OTHER PERTINENT PAPERS AND DOCUMENTS. EVERY PERSON WHO IS ENGAGED IN THE BUSINESS OF SELLING TANGIBLE PERSONAL PROPERTY AT RETAIL IN THIS STATE AND WHO, IN CONNECTION WITH SUCH BUSINESS, ALSO ENGAGES IN OTHER ACTIVITIES (INCLUDING, BUT NOT LIMITED TO, ENGAGING IN A SERVICE OCCUPATION) SHALL KEEP SUCH ADDITIONAL RECORDS AND BOOKS OF ALL SUCH ACTIVITIES AS WILL ACCURATELY REFLECT THE CHARACTER AND SCOPE OF SUCH ACTIVITIES AND THE AMOUNT OF RECEIPTS REALIZED THEREFROM.

ALL BOOKS AND RECORDS AND OTHER PAPERS AND DOCUMENTS WHICH ARE REQUIRED BY THIS ACT TO BE KEPT SHALL BE KEPT IN THE AMERICAN LANGUAGE AND SHALL, AT ALL TIMES DURING BUSINESS HOURS OF THE DAY, BE SUBJECT TO INSPECTION BY THE DEPARTMENT OR ITS DULY AUTHORIZED AGENTS AND EMPLOYEES.

TO SUPPORT DEDUCTIONS MADE ON THE TAX RETURN FORM, OR AUTHORIZED UNDER THIS ACT, ON ACCOUNT OF RECEIPTS FROM

ISOLATED OR OCCASIONAL SALES OF TANGIBLE PERSONAL PROPERTY, ON ACCOUNT OF RECEIPTS FROM SALES OF TANGIBLE PERSONAL PROPERTY FOR RESALE, ON ACCOUNT OF RECEIPTS FROM SALES TO GOVERNMENTAL BODIES OR OTHER EXEMPTED TYPES OF PURCHASERS, ON ACCOUNT OF RECEIPTS FROM SALES OF TANGIBLE PERSONAL PROPERTY IN INTERSTATE COMMERCE, AND ON ACCOUNT OF RECEIPTS FROM ANY OTHER KIND OF TRANSACTION THAT IS NOT TAXABLE UNDER THIS ACT, ENTRIES IN ANY BOOKS, RECORDS OR OTHER PERTINENT PAPERS OR DOCUMENTS OF THE TAXPAYER IN RELATION THERETO SHALL BE IN DETAIL SUFFICIENT TO SHOW THE NAME AND ADDRESS OF THE TAXPAYER'S CUSTOMER IN EACH SUCH TRANSACTION, THE CHARACTER OF EVERY SUCH TRANSACTION, THE DATE OF EVERY SUCH TRANSACTION, THE AMOUNT OF RECEIPTS REALIZED FROM EVERY SUCH TRANSACTION AND SUCH OTHER INFORMATION AS MAY BE NECESSARY TO ESTABLISH THE NON-TAXABLE CHARACTER OF SUCH TRANSACTION UNDER THIS ACT.

EXCEPT IN THE CASE OF A SALE TO A PURCHASER WHO WILL ALWAYS RESELL AND DELIVER THE PROPERTY TO HIS CUSTOMERS OUTSIDE ILLINOIS, ANYONE CLAIMING THAT HE HAS MADE A NONTAXABLE SALE FOR RESALE IN SOME FORM AS TANGIBLE PERSONAL PROPERTY SHALL ALSO KEEP A RECORD OF THE PURCHASER'S REGISTRATION NUMBER OR RESALE NUMBER WITH THE DEPARTMENT.

IT SHALL BE PRESUMED THAT ALL SALES OF TANGIBLE PERSONAL PROPERTY ARE SUBJECT TO TAX UNDER THIS ACT UNTIL THE CONTRARY IS ESTABLISHED, AND THE BURDEN OF PROVING THAT A TRANSACTION IS NOT TAXABLE HEREUNDER SHALL BE UPON THE

PERSON WHO WOULD BE REQUIRED TO REMIT THE TAX TO THE DEPARTMENT IF SUCH TRANSACTION IS TAXABLE. IN THE COURSE OF ANY AUDIT OR INVESTIGATION OR HEARING BY THE DEPARTMENT WITH REFERENCE TO A GIVEN TAXPAYER, IF THE DEPARTMENT FINDS THAT THE TAXPAYER LACKS DOCUMENTARY EVIDENCE NEEDED TO SUPPORT THE TAXPAYER'S CLAIM TO EXEMPTION FROM TAX HEREUNDER, THE DEPARTMENT IS AUTHORIZED TO NOTIFY THE TAXPAYER IN WRITING TO PRODUCE SUCH EVIDENCE, AND THE TAXPAYER SHALL HAVE 60 DAYS SUBJECT TO THE RIGHT OF THE DEPARTMENT TO EXTEND THIS PERIOD EITHER ON REQUEST FOR GOOD CAUSE SHOWN OR ON ITS OWN MOTION FROM THE DATE WHEN SUCH NOTICE IS SENT TO THE TAXPAYER BY CERTIFIED OR REGISTERED MAIL (OR DELIVERED TO THE TAXPAYER IF THE NOTICE IS SERVED PERSONALLY) IN WHICH TO OBTAIN AND PRODUCE SUCH EVIDENCE FOR THE DEPARTMENT'S INSPECTION, FAILING WHICH THE MATTER SHALL BE CLOSED, AND THE TRANSACTION SHALL BE CONCLUSIVELY PRESUMED TO BE TAXABLE HEREUNDER.

BOOKS AND RECORDS AND OTHER PAPERS REFLECTING GROSS RECEIPTS RECEIVED DURING ANY PERIOD WITH RESPECT TO WHICH THE DEPARTMENT IS AUTHORIZED TO ISSUE NOTICES OF TAX LIABILITY AS PROVIDED BY SECTIONS 4 AND 5 OF THIS ACT SHALL BE PRESERVED UNTIL THE EXPIRATION OF SUCH PERIOD UNLESS THE DEPARTMENT, IN WRITING, SHALL AUTHORIZE THEIR DESTRUCTION OR DISPOSAL PRIOR TO SUCH EXPIRATION.

I FIND THAT THE FACTS AND HOLDING IN COPILEVITZ V. DEPARTMENT OF REVENUE, 41 ILL.2D 154 (1968) IS SUPPORTIVE OF MY FINDING THAT THE TAXPAYER IS LIABLE FOR THE TAX IMPOSED BY THE NOTICES OF TAX LIABILITY. IN THAT CASE, THE SUPREME COURT FOUND THAT THE ORAL TESTIMONY OF THE PLAINTIFF, THAT

UNREPORTED RECEIPTS WERE DERIVED FROM INTERSTATE SALES AND SALES FOR RESALE AND SO WERE NOT SUBJECT TO RETAILER'S OCCUPATION TAX, WAS REQUIRED TO BE REJECTED WHERE THE RETAILER'S OCCUPATION TAX ACT AND DEPARTMENT OF REVENUE REGULATIONS REQUIRED DOCUMENTARY EVIDENCE OF PURPORTED DEDUCTIBLE RECEIPTS.

IN THIS CASE, THE TAXPAYER PRODUCED NEITHER RESALE CERTIFICATES NOR EXEMPTION CERTIFICATES TO VALIDATE HIS CLAIMS THAT THE SALES IN QUESTION WERE EITHER SALES FOR RESALE OR SALES TO TAX EXEMPT ENTITIES. THE TAXPAYER FAILED TO ESTABLISH THAT HE WAS A WHOLESALER BY HIS BOOKS AND RECORDS, AS REQUIRED BY THE LAW. THE ONE TRUE EXEMPTION NUMBER THAT HE SUBMITTED WAS ATTRIBUTABLE TO TAXPAYER D, NUMBER XXXXX, WAS IN FACT THE EXEMPTION NUMBER GRANTED BY THE DEPARTMENT TO TAXPAYER F. THE TAXPAYER HAS FAILED TO REBUT THE PRIMA FACIE CASE OF THE DEPARTMENT.

IT IS THEREFORE RECOMMENDED THAT THE DIRECTOR OF THE DEPARTMENT UPHOLD THE NOTICES OF TAX LIABILITY, NUMBERED XXXXX AND XXXXX, IN THEIR ENTIRETY.

RESPECTFULLY SUBMITTED,

BARBARA S. ROWE
ADMINISTRATIVE LAW JUDGE
JANUARY 19, 1996